

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS)
LIABILITY LITIGATION)
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THIS DOCUMENT RELATES TO:)
All Cases Against the Saint Thomas)
Defendants)

**MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)**

**PLAINTIFFS' STEERING COMMITTEE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING COMPARATIVE FAULT DEFENSES ATTRIBUTING
FAULT TO GOVERNMENTAL ENTITIES**

The Plaintiffs' Steering Committee respectfully moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for entry of partial summary judgment dismissing the Saint Thomas Defendants'¹ affirmative defenses attempting to attribute fault at trial to certain government entities, including the Food and Drug Administration, Massachusetts Board of Registration in Pharmacy, the Tennessee Board of Pharmacy, and the Tennessee Department of Health. As grounds for this motion, the PSC states that, under Tennessee law, fault cannot be attributed to the above mentioned government agencies because none of those agencies owed an individual legal duty to any particular plaintiff. Under Tennessee's public duty doctrine, the only legal duty owed by said governmental entities was owed to the general public, not to any particular individual. Accordingly, because legal duty is an essential element of fault under Tennessee law, plaintiffs are entitled to partial summary judgment establishing that fault cannot be allocated to governmental entities at trial.

¹ The Saint Thomas Defendants include the following entities and individuals: the Saint Thomas Outpatient Neurosurgical Center, LLC, Howell Allen Clinic, A Professional Corporation, John Culclasure, MD, Debra V. Schamberg, RN, Vaughn Allen, MD, Saint Thomas West Hospital f/k/a Saint Thomas Hospital, Saint Thomas Network, and Saint Thomas Health.

Additionally, the Saint Thomas Defendants have failed to put forth any evidence that the Tennessee Board of Pharmacy and/or the Tennessee Department of Health caused plaintiffs' injuries (even assuming they had a duty to prevent them).

As grounds for this motion, the Plaintiffs' Steering Committee relies upon the contemporaneously filed Memorandum of Law and Statement of Undisputed Material Facts.

Respectfully Submitted This 19th Day of May, 2016,

/s/ J. Gerard Stranch, IV

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. GERARD STRANCH, hereby certify that on May 19, 2016, I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

/s/ **Gerard Stranch, IV**

J. GERARD STRANCH, IV